Supreme Court, U.S.
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No. 87-290

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

Domingo Roman,

Petitioner,

vs.

Sunny Slope Farms, Inc.,

Respondent.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the Petitioner's erroneous assertion that the Migrant and Seasonal Agricultural Worker Protection Act provides an additional remedy for an on-the-job injury in a case in which state worker's compensation is available present an important question of federal law which should be settled by this Court?

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STATEMENT OF THE CASE

This proceeding was instituted in the Federal District Court for South Carolina against Respondent, Sunny Slope Farms, Inc., by its employee, Domingo Roman, a migrant farm worker represented by the Neighborhood Legal Assistance Program, Inc., who sought to recover damages for injuries allegedly caused by the spraying of pesticides. The Complaint stated that pursuant to a written contract of employment, "Plaintiff would at all relevant times be covered by a policy of workmen's compensation insurance . . . ". Petitioner further alleged in pertinent part that as a result of this spraying, he "suffered physical injuries which will be proven at trial." The Complaint contained several separate causes of action or

claims for relief which were all essentially based on the foregoing allegations, but the assertion that the Petitioner is apparently attempting to make in this Court is based upon the theory that the Respondent had violated the terms of the working arrangements between the parties which it is required to abide by under 29 U.S.C. §1832(c), The Migrant and Seasonal Agricultural Protection Act (AWPA).

In its Answer, the Respondent set forth, among other things, the defense that if the Petitioner was able to prove an on-the-job injury, he would be entitled only to workers' compensation benefits under the South Carolina Workers' Compensation Act, which Act provides the exclusive remedy for Petitioner's alleged injury. This conclusion is required under

the clear terms of South Carolina Code Annotated, §42-1-540, which provides, without qualification, that:

> "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representatives, parents, dependents, or next of kin, as against his employer, at common law or otherwise, on account of such injury, loss of service, or death."

The Respondent made a motion to dismiss the Complaint on the grounds that Petitioner had failed to state a cause of action against the Respondent upon which relief could be granted. Argument was had on the motion and the District Court ruled that the South Carolina Workers' Compensation law provided the exclusive

remedy for any injury Petitioner may have suffered.

The Petitioner filed an appeal of this Order to the Fourth Circuit Court of Appeals. The case was argued on June 3, 1986, and, by Order dated May 7, 1987, the Fourth Circuit Court of Appeals confirmed, without dissent, the decision of the District Court. The Fourth Circuit Court of Appeals stated in pertinent part:

> "The principal question raised on appeal and the question upon which the whole case turns is whether AWPA supplements the South Carolina Workers' Compensation law in the sense that AWPA in an appropriate case provides a remedy where no state workers' compensation remedy is available, or whether it, indeed, provides a remedy in addition to state workers' compensation for an on-the-job injury, so that AWPA in an appropriate case provides a remedy whether or not the injury is covered by state workers' compensation.

> "We conclude that AWPA was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available. We need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance."

The Respondent is in receipt of a Petition for Writ of Certiorari which contains a Certificate of Filing indicating that forty copies of the Petition were mailed to the office of the Clerk, Supreme Court of the United States, Washington, D.C., for filing, on August 4, 1987.

SUMMARY OF ARGUMENT

The Fourth Circuit Court of Appeals correctly ruled that the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §1801, et seq., was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available and the appellant's erroneous assertion to the contrary does not present an important question of federal law which should be settled by this Court.

ARGUMENT

The Petitioner's asserted claim under AWPA contains the assertion that Petitioner Roman and the Respondent Sunny Slope entered into a written contract of employment wherein Sunny Slope promised to furnish Petitioner special clothing

required to perform his work and that the Petitioner would at all relevant times be covered by a policy of workmen's compensation insurance. The Petitioner asserted that the employer's failure to furnish him protective clothing constituted a violation of AWPA, which was argued to be actionable under 29 U.S.C. §1854, since such failure violated §1832(c) which required an employer to conform to any working arrangements made with its workers.

The District Court and the Court of Appeals correctly ruled that the state workers' compensation insurance program provided the exclusive remedy to the Plaintiff, precluding all other claims arising from this incident. The Fourth Circuit Court of Appeals specifically held that "AWPA was not intended to provide an

additional remedy for an on-the-job injury in a case in which state workers' compensation is available."

The Fourth Circuit Court of Appeals properly observed that 29 U.S.C. §1871, which contemplates compliance with appropriate state law, "is a clear direction that Congress did not intend to preempt state workers' compensation laws." The Court continued:

> "The fact that such laws were not intended to be preempted is shown by that part of the statute, 29 U.S.C. §1841, dealing with motor vehicle safety. The section sets standards for the vehicles involved in the transportation of migrant workers by agricultural employers, and subsection (b)(1)(C) provides (in order to protect the workers) that the employer have a liability insurance policy or bond covering the operation of any vehicle used to transport migrant workers. This provision is then followed by subsection (c) which provides, in

> subsection (1), that no such insurance policy or bond shall be required of the employer if those workers are transported only under circumstances for which there is coverage under a state workers' compensation law. In addition to demonstrating that Congress did not intend to preempt state law, §1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them."

See Domingo Roman v. Sunny Slope Farms, Inc., 817 F.2d 1116, at 1118 and 1119 (4th Cir. 1987) (Petition for Writ of Certiorari - Appendix - Pages 31 and 32).

Of course, it is elementary law in South Carolina that if the facts bring a particular case within the terms of the Compensation Act, the employee is restricted to his right of claim for compensation under the Act. Marchbanks v. Duke Power Company, 190 S.C. 336, 2 S.E.2d

825, 836 (1939). As the Court stated in Marchbanks, the very purpose of the Act is to assure the employee of redress for his injuries, if the facts show he is entitled thereto, and to relieve him of the uncertainties of a trial in a suit for damages. Id. In the instant case, the Respondent elected to be bound and has procured workers' compensation insurance in compliance with appropriate State law and the working arrangement of the parties. See South Carolina Code Annotated, §42-1-360 (5). The Petitioner in this case is covered by South Carolina workers' compensation insurance and has in fact filed a state workers' compensation claim.

The decision of the Fourth Circuit is in keeping with the black letter rule of law set out by Professor Larson, in his extensive treatment of the "exclusive

remedy" doctrine in his treatise on workmen's compensation law:

> "The exclusiveness rule relieves the employer not only of common law tort liability, but also of statutory liability under all state and federal statutes, as well as of liability in contract and in admiralty, for an injury covered by the compensation act."

2A Larsons, Workmen's Compensation Law, Section 65.30.

The Fourth Circuit Court of Appeals was persuaded by the cases of United States v. Demko, 385 U.S. 149, 87 S. Ct. 382, 17 L. Ed. 258 (1966) and Garvin v. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986), in arriving at its conclusion in this case. The Demko case involved the claim of a federal prisoner who was injured while performing an assigned prison task and who filed a claim under 18 U.S.C. §4126 which provided

compensation to federal prisoners for industrial injuries. The statute authorizing a prisoner's claim contained no provision that the compensation award was exclusive and the prisoner attempted to file a claim against the United States under the Federal Tort Claims Act. The Supreme Court denied the claim stating, in language which was quoted with approval by the Fourth Circuit Court of Appeals in this case, that: "Consequently, we decide this case on the Johansen principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group. 385 U.S. 152." (emphasis supplied) See Roman, supra, Petition for Writ of Certiorari - Appendix - p. 34.

In the case of Garvin v. Alumax of South Carolina, Inc., supra, the plaintiff was injured on a pier in South Carolina and was covered by the Federal Longshoremen and Harbor Workers' Compensation Act and the South Carolina Workers' Compensation law. He filed a claim under the federal statute for compensation and then attempted to sue Alumax, the owner of a machine which injured him, which entity would have been immune under state law by operation of the South Carolina Workers' Compensation Act. The Fourth Circuit Court of Appeals properly held that Garvin's suit was barred because of the immunity granted by the South Carolina Workers' Compensation law.

Utilizing the reasoning of Demko and Garvin, the Fourth Circuit Court of

Appeals in the instant case reviewed the legislative history of AWPA and concluded, "We find nothing in the legislative history, which is found at 4 U.S. Code and Administrative News (1982), page 4547 (House Rep. No. 97-885, no Senate reports submitted) or in the language of the statute which indicates that the South Carolina Workers' Compensation law, which does cover the plaintiff, should not be the exclusive remedy to protect him from an on-the-job injury." See Roman, supra, Petition for Writ of Certiorari - Appendix - Page 36.

Petitioner's counsel admitted in the Brief submitted to the Fourth Circuit Court of Appeals that he had found no case where physical injuries had been compensated under AWPA. Petitioner's argument that Congress meant to address

physical as well as economic threats imposed by the migrant farm worker environment remains unsupported by precedent even in his Petition for Writ of Certiorari. As indicated by the Fourth Circuit, AWPA by its terms contemplates compliance with state law in §1871 and §1841(c). §1841, dealing with motor vehicle safety, specifically states that if an agricultural employee provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by state law, certain insurance requirements under §1841 do not apply. Of course, workers' compensation insurance coverage, under most state statutes, is comprehensive and the policies are written in conformity with state statutes to cover all claims arising under the Act. See generally 4 Larson's

Workmen's Compensation Law, §93, et seq. If on-the-job motor vehicle injuries are covered by insurance, all other on-the-job injuries are covered by the same insurance policy. As AWPA by its terms contemplates workers' compensation coverage for agricultural workers for injuries arising out of their employment, it strains logic for the petitioner to even argue that AWPA, which has never been applied to give a remedy for personal injuries, was designed to displace the comprehensive schemes set up by the state workers' compensation acts.

AWPA does not specifically state that damages for physical injuries are recoverable and the cases appear to deal solely with economic loss. See for example De Le Fuente v. Stokely Van Camp Company, Inc., 713 F.2d 225 (7th Cir.

1983); Marshall v. Green Goddess Avocado Corp., 615 F. 2nd 851 (9th Cir. 1980). Contrary to Petitioner's argument, before this court, the Fourth Ciruit Court of Appeals did not assume for purposes of argument that Claimant would have an otherwise actionable claim under AWPA. The Fourth Circuit specifically stated "we need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance". See Roman, supra, Petition for Writ of Certorari - Appendix - page 30.

Respondent would submit that it is not in the individual Petitioner's best interest to seek an uncertain and heretofore unproven remedy under AWPA when a comprehensive and certain workers'

compensation remedy is available to Petitioner. Respondent is a private corporation and would submit that the Neighborhood Legal Assistance Program, Inc. is requiring Respondent to spend unnecessary time and effort to defeat this unmeritorious claim, which represents an effort to create a cause of action without sufficient statutory or legal basis. The claim was properly rejected by the South Carolina District Court and the Fourth Circuit Court of Appeals.

The Petition for Writ of Certiorari should not be granted by this court. Rule 17 provides that review on Writ of Certiorari is not a matter of right but of judicial discretion, and will be granted only when there are special and important reasons therefor. Petitioner's position is without merit and, of course, there

have been no decisions in other Federal Courts of Appeal which are in conflict with the decision by the Fourth Circuit Court of Appeals.

The decision in the instant case does not "decide an important question of Federal Law which has not been, but should be, settled by this court." See Supreme Court Rule 17.1(c). The Petitioner's assertions were properly denied by the Fourth Ciruit Court of Appeals, and the lack of any decision holding that the AWPA provides a remedy in an appropriate case for an on-the-job injury, indicates that the question to be reviewed is not one of "general importance". See 13 Moore's Federal Practice ¶ 817.41, at page SC17-38. See also Harlan, Manning The Dikes, (1958) 13 Record NYCBA 541 at 551.

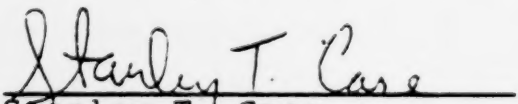
The fact that the Fourth Circuit has relied on the reasoning utilized by this court in The United States v. Demko, 385 US 149 (1966) and Johansen v. United States, 343 U.S. 427 (1952), indicates that it has not decided a Federal question in conflict with general principles announced by this court. See Rule 17.1(c).

CONCLUSION

The Fourth Circuit Court of Appeals correctly held that "when a migrant agricultural worker is injured on the job and his injury is covered by a State Workers' Compensation Law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision." See Roman, supra, Petition for Writ of Certorari -

Appendix - page 37. In so ruling, the Fourth Circuit correctly considered the legislative history of The Agricultural Workers' Protection Act, South Carolina law, and the reasoning of the Supreme Court in analogous situations. Petitioner has not demonstrated any special and important reason for granting the Petition and the Respondent would respectfully submit that the Petition should be denied.

Respectfully submitted,



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ATTORNEY FOR RESPONDENT
Bar of the United States
Supreme Court

August 31, 1987.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

CERTIFICATE
OF FILING

PERSONALLY appeared before me Stanley T. Case, who being duly sworn, deposes and says that he has knowledge of the mailing of the Brief in Opposition to Petition for Writ of Certiorari in the case of Domingo Roman v. Sunny Slope Farms, Inc., to the correct address for the Office of the Clerk, Supreme Court of the United States, Washington, D.C., for filing.

That the original and forty (40) copies were to his knowledge placed in a package with prepaid postage and mailed via first class United States Express overnight mail at the United States Post Office in Spartanburg, South Carolina, on August 31, 1987.

That to his knowledge the said original and forty (40) copies were

mailed within the time required for such filing.

Stanley T. Case

STANLEY T. CASE
Bar of the United States
Supreme Court

Sworn to and subscribed before me

this 31st day of August, 1987.

Agnes D. Keller

NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA
My Commission Expires: 1-30-91

STATE OF SOUTH CAROLINA) AFFIDAVIT
COUNTY OF SPARTANBURG) OF SERVICE

PERSONALLY appeared before me Stanley T. Case, who being duly sworn, deposes and says that he served three (3) copies of the attached Brief in Opposition to Petition for Writ of Certiorari in the action of Domingo Roman v. Sunny Slope Farms, Inc., upon the counsel of record for Petitioner, Domingo Roman, by depositing said documents in the United States Post Office with first class postage prepaid and addressed to the office of Marvin H. Feingold, Neighborhood Legal Assistance Program, Inc., 438 King Street, Charleston, South Carolina 29403, on this 31 day of August, 1987.

Stanley T. Case
STANLEY T. CASE

Sworn to and subscribed before me this 31st day of August, 1987.

Agnes D. Keller
NOTARY PUBLIC FOR THE STATE OF S. C.
My Commission Expires: 1-30-91

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Rule 28, the Respondent Sunny Slope Farms, Inc., makes the following disclosure:

1. The Respondent Sunny Slope Farms, Inc., is a privately held corporation and is not a subsidiary or affiliate of a publicly owned corporation.

2. Liberty Mutual Insurance Company is a publicly owned corporation, that is not a party to the appeal, but has a financial interest in the outcome for the reason that Liberty Mutual Insurance Company provides public liability insurance coverage and workers' compensation insurance coverage to Sunny Slope Farms, Inc.

This listing has been included in a document filed earlier in this case filed pursuant to Local Rule 47 and Internal Operating Procedure 47.1 of the United States Court of Appeals for the Fourth Circuit, Case Number 85-2090, dated November 1, 1985, entitled "Disclosure of Corporate Affiliations and Financial Interest."

Stanley T. Case
Counsel for Respondent

Date: August 31, 1987